



## Attainment Redesignations and 1-Hour Ozone Revocation

#06-18(APCB)/ LSA Document #06-18

### Overview

This rule incorporates by reference recent U.S. EPA rules that recognize that the following counties have achieved compliance with the health-based 8-hour ozone standards under the National Ambient Air Quality Standards (NAAQS):

Delaware, November 16, 2005 (70 FR 69443),  
Greene, November 14, 2005 (70 FR 69085),  
Jackson, November 14, 2005 (70 FR 69085),  
Vanderburgh, December 29, 2005 (70 FR 77026),

Vigo, January 5, 2006 (70 FR 541), and  
Warrick, December 29, 2005 (70 FR 77026).

This rule recognizes that Lake County has achieved compliance with the health-based NAAQS for sulfur dioxide (September 26, 2005, 70 FR 56129). This rule also incorporates by reference the U.S. EPA's rule that revokes obsolete designations under the revoked one hour standard for ozone (August 3, 2005, 70 FR 44470).

The subject matter of this rule was originally noticed under two separate rulemakings, LSA #05-331 and LSA #06-18. They have been combined into a single rulemaking and will proceed through the process as the Attainment Redesignations and 1-Hour Ozone Revocation Rule under LSA #06-18.

### Citations Affected

Amends 326 IAC 1-4-1.

### Affected Persons

This rule affects sources of volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>) in Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick counties, sources of SO<sub>2</sub> in Lake County, sources in Lake and Porter Counties that are required to obtain a permit for emissions of volatile organic compounds (VOC)

due to the 1-hour ozone designation, and citizens living in these counties.

### Reason or Reasons for the Rule

Incorporation of the federal redesignations into the state rule will enable sources in these counties that emit significant levels of certain pollutants to be permitted under the Prevention of Significant Deterioration (PSD) rules. Until the state rulemaking is effective, sources in these counties will continue to be subject to the state's nonattainment rules, including the permitting rules.

This rulemaking is also necessary to revoke the 1-hour ozone standard in all areas of Indiana consistent with U.S. EPA's revocation of the standard.

### Economic Impact of the Rule

This rule incorporates by reference federal requirements. Implementation and enforcement of the new rules will require no additional fiscal expenditures by IDEM above and beyond current federal requirements and the rule will have no fiscal impact on any other unit of state or local government, unless a permit is sought under the Clean Air Act's major source program, which would be less costly.

### Benefits of the Rule

Redesignation of these counties to attainment for the 8-hour ozone standard and the SO<sub>2</sub> standard properly informs the public that their air meets health-based air quality standards and allows air permits for the applicable emissions in these counties to be issued under the PSD program, rather than the emission offset program.

Revocation of the 1-hour ozone standard for all areas in Indiana will ensure that air permits in Indiana are issued under the appropriate

permitting rules. As a result of revoking the 1-hour ozone standard, new major sources and major modifications at existing major sources in Lake and Porter Counties will no longer be subject to the requirements for a “severe” ozone nonattainment area under the 1-hour ozone standard, but will be subject to the requirements for “moderate” nonattainment for the 8-hour ozone standard.

## **Description of the Rulemaking Project**

### Administrative Note

The Lake County Sulfur Dioxide Redesignation and 1-Hour Ozone Revocation Rule (LSA #05-331) and 8-Hour Ozone Redesignation of Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick Counties (LSA #06-18) have been combined into a single rulemaking and will proceed through the process as the Attainment Redesignations and 1-Hour Ozone Revocation Rule under LSA #06-18. These two actions have been combined because they contain amendments to the same existing rule section (326 IAC 1-4-1), include incorporation by reference of federal requirements with no additional provisions, and they are now on the same schedule for action by the Air Pollution Control Board (APCB). Merging these two rules will allow the APCB to adopt the amendments in one action at the preliminary and final adoption hearings and will simplify processing of the promulgation materials after final adoption.

The draft rule language published in the February 1, 2006 Indiana Register for LSA #06-18 inadvertently included the amendments from LSA #05-331, but without the explanatory information of the reasons for the changes. Therefore, in accordance with IC 13-14-9-4.5 and in order to provide proper notice to all interested parties, after preliminary adoption of the combined rules, the proposed rule with a full explanation of all amendments and reasons for combining these two rules will be published in the Indiana Register with a written comment period of 21-days. IDEM will respond to any comments received and provide them to the APCB at the time of final adoption.

### Redesignation of Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick Counties to Attainment for the 8-Hour Ozone Standard

On April 30, 2004, U.S. EPA published nonattainment designations for twenty-four (24) Indiana counties, entirely or in part, for the 8-hour ozone standard (69 FR 23858). The standard is set at 0.08 parts per million (ppm). Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick Counties were designated as basic nonattainment for the standard. This designation requires Indiana to develop a plan to reduce volatile organic compound (VOC) and oxides of nitrogen (NO<sub>x</sub>) emissions and make a demonstration that the area will meet the 8-hour ozone standard by June 15, 2009.

However, ozone monitoring data and photochemical modeling analyses demonstrate that air quality has met the NAAQS for ozone in Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick Counties in advance of the development of an attainment plan. Air quality in these areas has improved largely as a result of regional oxides of nitrogen (NO<sub>x</sub>) reductions from power plants implemented in 2004. As a result, Indiana requested U.S. EPA to change the 8-hour ozone designation for these counties from nonattainment to attainment. Indiana submitted redesignation requests for: Delaware County on August 25, 2005; Greene and Jackson Counties on July 15, 2005, with supplemental information submitted on September 6, September 7, October 6, and October 20, 2005; Vigo County on July 5, 2005, with supplemental information submitted on October 20 and November 4, 2005; and Vanderburgh and Warrick Counties on June 2, 2005. Included with these requests were summaries of relevant air quality data, evidence of the opportunity for public review of the requests, including public hearings, and a discussion of how the various criteria for redesignation have been met.

U.S. EPA published approval of Indiana’s request to redesignate Delaware County to attainment for 8-hour ozone in the Federal Register on November 16, 2005 (70 FR 69443). The approval for Greene and Jackson Counties was published on November 14, 2005 (70 FR 69085), for Vanderburgh and Warrick Counties on December 29, 2005 (70 FR 77026), and for Vigo County on January 5, 2006 (70 FR 541).

U.S. EPA’s action was based on a review of the five prerequisites for redesignation of areas from nonattainment to attainment as identified by Clean Air Act Section 107(d)(3)(E). U.S.

EPA concluded that these criteria have been met with respect to the 8-hour ozone standard in Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick Counties. These criteria are:

1. The area has attained the applicable air quality standards.
2. The area has a fully approved State Implementation Plan (SIP) under Section 110(k) of the Clean Air Act.
3. EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions.
4. EPA has determined that the maintenance plan for the area has met all of the requirements of Section 175A of the Clean Air Act.
5. The state has met all requirements applicable to the area under Section 110 and Part D of the Clean Air Act.

#### Redesignation of Lake County to Attainment for SO<sub>2</sub>

Based on monitored violations, a portion of Lake County in Indiana was designated as primary nonattainment with the SO<sub>2</sub> National Ambient Air Quality Standards (NAAQS) on March 3, 1978 (43 FR 8962). In compliance with the Clean Air Act (CAA), IDEM developed and implemented various rules since that time designed to control emissions of SO<sub>2</sub> in Lake County.

Most recently, IDEM conducted extensive modeling and initiated a rulemaking to make additional amendments to SO<sub>2</sub> requirements for many sources in the nonattainment area that would provide the basis for requesting a redesignation of Lake County to attainment for SO<sub>2</sub>. The completed rulemaking became effective in Indiana on June 24, 2005 and reflects a reduction of over 30,000 tons of SO<sub>2</sub> per year of allowable emissions from the emission limits in the 1989 State Implementation Plan. The last violation of the NAAQS for SO<sub>2</sub> was measured in 1980.

U.S. EPA published approval of the Lake County SO<sub>2</sub> rule and Indiana's request to redesignate Lake County to attainment for SO<sub>2</sub> in the Federal Register on September 26, 2005 (70 FR 56129). U.S. EPA approved the maintenance plan for these counties that includes maintaining existing programs and air monitoring. This action was effective October

26, 2005.

#### Permitting for Redesignated Counties

Until this state rulemaking is effective, Lake County will be subject to the state's nonattainment permitting rules for SO<sub>2</sub> and Delaware, Greene, Jackson, Vanderburgh, Vigo, and Warrick Counties will be subject to nonattainment permitting rules for ozone. In addition, residents and prospective residents will continue to receive the false message that their air does not meet health-based air quality standards.

IDEM proposes to amend Indiana's rules for consistency with the federal redesignations of these counties. These redesignations mean that new major sources and major modifications at existing major sources will be subject to the Prevention of Significant Deterioration (PSD) rules in 326 IAC 2-2, rather than the Emission Offset rules in 326 IAC 2-3. The PSD rules require Best Available Control Technology (BACT) and certain air quality demonstrations including continued compliance with the NAAQS and limits on incremental maximum allowable increases in ambient concentrations of the applicable pollutant.

#### Revocation of 1-Hour Ozone Standard

On April 30, 2004, U.S. EPA published the first phase of its final rule to implement the 8-hour ozone national ambient air quality standard (Phase 1 Rule). At that time U.S. EPA also published 8-hour ozone designations for all areas of the country. For most areas, the 8-hour ozone designations became effective on June 15, 2004. The Phase 1 Rule provided that the 1-hour ozone NAAQS would no longer apply for an area one (1) year following the effective date of the area's designation for the 8-hour ozone NAAQS.

On August 3, 2005, U.S. EPA published a final rule to codify the revocation of the 1-hour standard for those areas with effective 8-hour ozone designations (70 FR 44470). U.S. EPA revised the tables at 40 CFR Part 81 to indicate for which areas the 1-hour standard has been revoked, but retained the 1-hour ozone NAAQS designation and classification status as of the time of the effective date of designation for the 8-hour ozone NAAQS for the purposes of 40 CFR 51.905, Subpart X ("How do areas

transition from the 1-hour NAAQS to the 8-hour NAAQS and what are the anti-backsliding provisions?”).

These provisions establish that a specific list of applicable requirements (see 40 CFR 51.900(f)) that are in place under the nonattainment or maintenance programs for the 1-hour standard remain in place under the 8-hour standard. These provisions also specify that the 8-hour nonattainment classifications will govern New Source Review rather than the 1-hour classifications that have been revoked.

In 40 CFR 81.315, the table entitled “Indiana - Ozone (1-Hour Standard)” is amended by adding footnote 2 to read as follows:

The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Indiana. The Evansville, Indianapolis, Louisville, and South Bend-Elkhart areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR Part 51, Subpart X.

(40 CFR Part 51, Subpart X, “Provisions for Implementation of 8-hour Ozone National Ambient Air Quality Standard.”)

On November 29, 2005, U.S. EPA published the second phase of the final rule to implement the 8-hour ozone standard (Phase 2 Rule). This rule took final action on most of the remaining elements of the program, but did not make any additional changes that impact revocation of the 1-hour ozone standard in Indiana.

#### Permitting Thresholds and Offset Ratios

Since U.S. EPA has revoked the 1-hour ozone standard for all areas in Indiana, IDEM proposes to incorporate by reference the revocation at 40 CFR 81.315 in order to make state and federal rules consistent.

As a result of revoking the 1-hour ozone standard, new major sources and major modifications at existing major sources in Lake and Porter Counties will no longer be subject to both the requirements for a “severe” ozone nonattainment area and the requirements for “moderate” nonattainment for the 8-hour ozone standard.

Under the definition of “major stationary source” at 326 IAC 2-3-1(aa), new sources in severe ozone nonattainment areas are major stationary sources if they emit or have the potential to emit 25 tons volatile organic compounds (VOCs) per year, and must comply with the permitting requirements for major

stationary sources. In a moderate nonattainment area, the major stationary source obligations are triggered if a new source emits or has the potential to emit 100 tons VOC per year.

Modifications in a severe ozone nonattainment area at sources with emission increases that exceed the “de minimis” emission limit of 25 tons VOC per year, as defined in 326 IAC 2-3-1(q), are subject to more restrictive permitting requirements. In a moderate ozone nonattainment area, the emissions increase considered significant that triggers more restrictive permitting requirements is 40 tons VOC per year.

In addition, under the 1-hour ozone standard, major stationary sources in Lake and Porter Counties had to comply with the severe minimum offset ratio of 1.3 to 1 for VOCs in accordance with 326 IAC 2-3-3(a)(5). With revocation of the 1-hour ozone standard, major stationary sources in these counties must comply with the “moderate” nonattainment minimum offset ratio of 1.15 to 1 for VOCs.

#### Administrative Update and Technical Correction

IDEM proposes to remove two citations in 326 IAC 1-4-1 because they have been incorporated into state rules through updates to the Code of Federal Regulations (CFR) and are no longer needed.

IDEM proposes a technical correction to the list of incorporations by reference in this section. The citation “69 FR 23858” has been changed to “69 FR 23900” to reflect the page on which the actual rule language starts rather than the first page of the entire notice.

#### **Scheduled Hearings**

First Public Hearing: March 1, 2006; Indiana Government Center-South, Conference Center, Room A, 402 West Washington Street, Indianapolis, Indiana 46204.

Second Public Hearing: May 3, 2006; Indiana Government Center-South, Conference Center, Room A, 402 West Washington Street, Indianapolis, Indiana 46204.

#### **Consideration of Factors Outlined in Indiana Code 13-14-8-4**

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the

board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
  - (A) human, plant, animal, or aquatic life; or
  - (B) the reasonable enjoyment of life and property.

### **Consistency with Federal Requirements**

The amended rule is consistent with federal laws and rules.

### **Rulemaking Process**

The first step in the rulemaking process is publication of one of three types of notices in the *Indiana Register*. The first type of notice is a first notice of comment period. The first notice of comment period includes a discussion of issues and opens a first comment period. A second notice is then published which contains the comments and the departments responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The second type of notice is a section 7 notice. A section 7 notice contains a determination by the commissioner under IC 13-14-9-7 that only one comment period is required. It contains the commissioner's determination and findings, the draft rule, a request for written comments and a notice of first meeting/hearing. The third type of notice is a section 8 notice. A section 8 notice contains a determination by the commissioner under IC 13-14-9-8 that no public comment periods are required. It contains the commissioner's determination and findings, the draft rule and a notice of first meeting/hearing. In each case the Air Pollution Control Board holds the first meeting/hearing and public

comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Secretary of State. This rulemaking was initiated with two section 8 notices which were combined prior to preliminary adoption.

### **IDEM Contact**

Additional information regarding this rulemaking action can be obtained from Christine Pedersen, Rule Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).